

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जे', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI

Before Shri G S Pannu, AM & Shri Sanjay Garg, JM

ITA No.1429/Mum/2010
निर्धारण वर्ष / Assessment Year - 2006-07

The ITO Ward 1(3), Thane	Vs	Bipin Ramji Katira (HUF) Jay Yogeshwar Octroi Services, Shop No.4., Nayan CHS, Eastern Express Highway, Nr. Shreema Balniketan School Thane (E) PAN AACHK5422L
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

Appellant By : Shri Akhilendra P Yadav
Respondent By : Shri Subodh Ratanaparkhi

सुनवाई की तारीख / Date of Hearing :05.08.2015.	घोषणा की तारीख / Date of Pronouncement : 30.11.2015
---	--

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal filed by the revenue is directed against the order of the CIT(A)-II, Thane, dated 26.11.2009, for A.Y. 2006-07.

2. The revenue has raised the following grounds of appeal:

"1. *The learned CIT(A) has erred in fact and in law in deleting the additions made on account of unexplained cash deposits.*

2. The learned CIT(A) has erred in fact and in law in deleting the additions made on account of unproved cash credits."

The revenue through the above grounds has agitated the action of the CIT(A) in deleting the additions made on account of unexplained cash deposits and on account of cash credit received by the assessee HUF. So far as the first issue is concerned, the assessee HUF during the year received cash deposits from its own members' viz. Shri Bipin Katira and Smt. Geeta Bipin Katira. The AO had treated the said deposits as unexplained on the ground that the assessee had not submitted the cash flow statement of the creditors. The learned CIT(A) has deleted the disallowance made by the AO observing that the assessee had filed copies of IT return, Profit & Loss account and Balance sheet of the depositors, who were the members of the HUF itself. The assessee HUF had purchased a house property. However, it could not get the loan from the bank on time and because of time constraint, temporary contributions were made by HUF members. Both the above mentioned members have been regularly filing their returns and are being assessed by the same Assessing Officer. They were having sufficient cash balance over the period of time as per their balance sheet filed with the department. All the details were filed before the Assessing Officer by the assessee. The Assessing Officer could not prove that the said depositors viz. Shri Bipin Katira and Smt. Geeta Bipin Katira were not having cash balance

for the purpose of depositing with the HUF. The CIT(A) after examining all the facts and circumstances of the case deleted the disallowance made in this respect. We do not find any infirmity in the order of the CIT(A) in this respect.

3. The second issue relates to unexplained loan of Rs.15,50,000/- from Manisha Katira. The AO has treated the said loan as explained on the ground that the assessee could not prove the capacity of the creditor and the genuineness of the loan transaction. The learned CIT(A) however, deleted the disallowance observing as under:

"5.2.6 In the case of the appellant, the loan has been received from Smt. Manisha Katira, who is a third party. Her identity is not in doubt and even the genuineness of the transaction is not questioned by the AO. It is the capacity of the creditor to advance the money which is doubted by the AO. Summons have been recorded whereby she has accepted having advanced the money in question. She explained the source of the same as she has been doing the business of supplying the food items to persons and also undertakes stitching work and has been doing this work for the last 17 years on cash basis and this proves her capacity. Smt. Manisha Katira is a regular assessee. Whatever has been stated by the creditor even if not true, cannot be questioned without placing on record anything contrary to that effect. Statement of the creditor can only be rejected by making further investigations in the matter and by placing on record the evidence that whatever stated is not true. Till such evidence is not placed on record, the capacity of the creditor cannot be questioned and no action can be taken in the case of the appellant HUF. If the capacity is still in doubt, action may be initiated in the case of the creditor by

resorting to statutory remedies provided in the Income Tax Act. The appellant HUF cannot be penalized for acts of omission or commission, if any, of the third party creditor."

4. We have heard the learned representatives and have perused the material available on record. We find that the learned CIT(A) after appreciating the evidences produced by the assessee including the statement of Smt. Manisha Katira has held that the assessee could not be expected to do more than it has already done to prove the genuineness of transaction and creditworthiness of the creditor. We, therefore, do not find any infirmity in the well-reasoned order of the CIT(A) on this issue also and the same is accordingly upheld.

5. In the result the appeal of the Revenue is dismissed.

Order was pronounced in the open court on 30.11.2015.

Sd/-
(G S PANNU)
ACCOUNTANT MEMBER

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30 November, 2015.

SA

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, 'F' Bench, ITAT, Mumbai

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

प/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai